

Applicant: Saigh *et al.*

Serial No.: 10/807,496

Filing Date: March 23, 2004

Title: SYSTEM, METHOD AND PROCESS FOR
ORDER AND DELIVERY OF CLASSIFIED
GOODS AND SERVICES THOROUGH AN
AMALGAMATED DRIVE-THRU
COMPLEX



Docket Ref.:

AUTOCART

Group Art Unit:

3653

Examiner:

Jeffrey A. Shapiro

AFFIDAVIT PURSUANT TO 37 C.F.R. § 1.132

I, Cesar Beltran, owner of Beltran's Meat Market & Grill located at 1160 El Paseo Dr, Las Cruces, NM 88001, declare that I am a resident of Dona Ana County, Las Cruces, New Mexico. Based upon my personal knowledge, I would competently testify to the truth of the following:

1. I have over sixteen (16) years of experience in the retail grocery business and consider myself an expert in the grocery industry, which includes other related fields such as general merchandise, hot prepared foods, deli, dairy, frozen goods, refrigerated, produce and other perishables and non-durable goods. I own and operate an independent, privately owned supermarket in Dona Ana County. I have dealt with every aspect of the grocery industry, including merchandising (articles, goods and services), sales, marketing, operations, POS systems, financial management, advertising, purchasing, inventory control, customer relations, logistics, traffic flow, shrinkage and with many industry innovations over the years.
2. I have reviewed U.S. Patent Applicant No. 10/807,496 to Saigh, *et al* (the "Saigh application") and I understand what the Saigh application discloses and claims. I do not have any financial interest in the Saigh application.
3. I have also reviewed U.S. Patent No. 5,890,136 to Kipp *et al.* (the "Kipp patent"), titled "Quick Stop Mass Retail System" and I understand what the Kipp patent discloses. I do not have any financial interest in the Kipp patent.
4. I have reviewed the Advisory Action dated December 9, 2008. In this Advisory Action, I understand that the Patent Office has rejected numerous claims under 35 U.S.C. § 103 as being obvious primarily in light of the Kipp Patent. In this Advisory Action, the Patent Office asserts that the Kipp Patent discloses several features which are found in the Saigh application. As an expert in the grocery business, I disagree with such assertions for the various reasons identified below.
5. After careful review of the Kipp USPTP patent, Titled; "Quick Stop Mass Retail System" patent No. 5,890,136 I have made the following opinions.

CB
1-22-09

6. The Kipp patent facility is designed for low volume sales via an automated article delivery system serving only two vehicles at a time. Conversely the grocery business is based on high volume sales and low margins. Kipp cannot possibly accommodate high volume vehicle throughput for groceries since in the Kipp patent there is a two vehicle limit as verified by the following references as shown in the Kipp schematic Ref. (Fig. 1 #14) and (Fig. 5. #14, #44) (Fig. 6 # 14, #44) – see #14 (article Pickup area). Article pickup area as described in the Kipp patent is logistically fixed to two pickup stations. It is obvious to anyone familiar with the “art” that Kipp does not mention additional pickup stations able to accommodate the variations of low-volume traffic to high-volume traffic. This omission is critical in relation to grocery and service retailers since we must continually optimize and adjust to traffic flow and sales volume. Kipp does not mention critical elements that are required to accommodate varying traffic flow such as; vertical lifts, overhead conveyance or underground delivery options. Based on the forgoing information described by Kipp, the pickup stations are fixed and have no capability for expansion.

The vehicle traffic restriction as described by the Kipp patent is too limited and inflexible to accommodate high volume grocery sales and everyday services. It should be clear to any expert in the grocery and service industry that two pickup stations as shown in the Kipp patent would not possible handle and deliver the huge volume of goods and services and thousands of sales transactions per day in a hybrid facility as disclosed in the Saigh application. The Saigh patent, has the option to open or close several order/pickup stations to accommodate slow or peak periods as referenced by the Saigh patent; (0016-lines 10-13), (0075-lines 1-10), (00136, Lines 1-9).

High-traffic, high volume, low-margin, low cost sales of nondurable goods and services provided to the public on a daily basis requires computer controlled access lanes and access-controllable vehicle drive-thru pick up areas as described by the Saigh patent. These critical features are totally absent in the “vending machine” type facility described by the Kipp patent.

7. The Kipp patent only discloses an off-site, pre-ordering process for future pickup of “articles” and does not address the delivery of services. The provision for a consumer to make onsite orders and impulse purchases is never mentioned or addressed in the Kipp patent. Kipp, limited to pre-order (online orders only), Ref. (Column 1, Lines 6-11), (Column 2, lines 23-27), (Column 3, Lines 10-12). Kipp’s Ref., in patent 5,890,136; (NONE).

I am of the opinion that a person of skill in the grocery field would necessarily have wanted to include onsite ordering if it pertained to all grocery, prescription drugs, prepared foods etc. and almost any perishable goods and impulse items. The Kipp patent omits any language pertaining to onsite purchases from a kiosk. The Saigh patent includes many references to onsite ordering as referenced: (0094, Lines, 1-4), (0096, Lines, 1-11).

8. The Kipp patent also omits any reference to or consideration for providing any "services" in the automated facility. This omission eliminates the possibility of providing pharmaceutical items to the pickup station, eliminates any deli foods, perishables, prepared (hot or cold) foods, as well as eliminates any banking services and many other frequently needed services. I cannot find any references regarding the providing of services in the Kipp patent. The Kipp patent only refers to "Articles" as exemplified by; Ref. (Column 4, (e) Lines 26-30). Services are a predominate and inseparable feature of almost all current conventional drive-thru business models and Kipp, by not describing services, is further proof that Kipp's intent was not to provide every day consumer goods in his automated facility. The Kipp patent omission provides very strong evidence that the intent of patent No., 5,890,136 is not to dispense groceries but rather it is designed and suited for articles of clothing and consumer goods that are infrequently purchased and have a long shelf life. In addition, the Kipp patent would be more appropriate for specialty store goods, and goods that don't require temperature restrictions. A person skilled in the art would know the term "Service Inseparability", which is a major characteristic of services in that they are produced and consumed at the same time and cannot be separate from their provider whether the providers are people or machines. Customer services NAICS are thoroughly described and service providers are watermarked with their brand names, labels and public reputation. Numerous references of services classifications are made in the Saigh patent; Ref. (0016, Lines 6-9) (0053, Lines 3-13) (0066, Lines 1-14).

Furthermore, services are an imperative addition to a one-stop drive-thru facility. An "Article" is a noun that is known within the retail industry as a good, not a service. No services of any kind are mentioned or disclosed in the Kipp patent. As such, I believe this recitation in the Saigh application is not obvious in light of the Kipp patent, therefore eliminating all possibility of any services oriented retail delivery to a customer's vehicle.

9. The Kipp patent makes no mention of the need for compartmentalizing or holding pre-ordered "Articles" in a controlled temperature. Kipp's "article retrieval stations" are simply comprised of a release mechanism for the articles. In my experience in the grocery field, perishable products may include products (such as produce and dairy) which necessarily require a temperature controlled area (e.g. refrigeration) for storage. The Kipp patent does not mention frozen goods "articles", heated food areas, or any other temperature-controlled areas that are adapted to store products which require a certain temperature. As a result, the Kipp patent is limited in application to a facility which does not require temperature controlled areas. As further support of this opinion, the Kipp patent fails to identify any equipment which would support a temperature controlled area for the purpose of delivering high volume perishable goods. As previously stated, I am the co-owner/manager of a full service grocery store and know that it is impossible for anyone skilled in my field not to reference the necessity of equipping Kipp's "article retrieval stations" and or Kipp's "retrieval baskets" with a controlled temperature apparatus. Kipp's Ref., in patent 5,890,136; (NONE).

In stark contrast the Saigh patent holds goods and services in a temperature controlled carousel. The Saigh patent allows for refrigerated goods, frozen goods, hot goods etc. to

be held at it optimum temperature until the item is delivered via the multilane drive-thru facility.

Saigh Ref. (00127, Lines 13-21) (20, Lines 1-3) (21, Lines 1-5) as well as many others references.

10. Additionally, I know that prepared hot foods have a time restriction and require supervision and staffing pursuant to United States Federal Food and Drug Administration ("FDA") regulations. The Kipp patent does not teach any type of a facility which is adapted to hold time-sensitive goods or services separately as recited in the Saigh application (Saigh Ref. See above). Kipp's Ref., in patent 5,890,136; (NONE).

11. The Kipp retrieval system is activated only when a customer identifies himself at the checkout area. The retrieval process does not begin at all prior to the customer's arrival at the checkout area. Only then are the products automatically retrieved from the storage area. Kipp Ref. (Column 6, Lines, 5-28)

The Saigh patent pre-gathers and stores the goods in optimum temperatures within the carrousel which releases the goods when the customer ID is detected at the kiosk. The Saigh patent represents a profound difference from Kipp in that the concept is designed primarily for groceries, goods and other services. The Saigh patent allows for the goods and services to exist at optimum temperatures and allows for pre-retrieval and safe storage prior to delivery. Saigh Ref. (00126, Lines 1-15), (00127, Lines 1-22).

The fact that Kipp does not have provision for pre-retrieval nor for temperature controlled stations clearly signifies that the items gathered at the retrieval basket can not involve any kind of prep time such as required for hot prepared foods, deli items, perishable goods and other goods and services.

12. It is clear to me, as an expert in the grocery and service industry, that the Kipp patent was not intended or designed for any service delivery such as pharmacy which has many restrictions for secure prescriptions distribution. The Kipp patent is fully automated and requires only part-time maintenance attention. It would be extremely dangerous for the USPTO to allow this patent be utilized for any such services that require strict control. This also holds true for other age restricted items such as alcohol and cigarettes. Kipp's Ref., for age restricted or secure goods in patent 5,890,136; (NONE).

13. Kipp's patent should be rightfully considered as a giant vending machine. The current USPTO objection is fundamentally flawed if full accounting is not taken of Kipp's patent and its relationship to the mechanics of a modern vending machine. Both the Kipp patent and a vending machine require minimal maintenance to operate. Vending machines are segregated according to their inherent functionality; cold sodas in one vending machine, frozen ice cream for example in another vending machine, hot coffee or foods dispensed in yet another vending machine. The Kipp patent is simply an oversized vending machine that is not capable of dispensing any temperature sensitive, restricted or service type item. The Kipp patent should not be used as an object to reject the Saigh patent, it would be more appropriately accountable to patents in the vending machine industry.

14. After careful review of the Kipp patent and being an expert in the grocery and other related service fields, I conclude that the "articles" for automated distribution to a car cannot include most perishable grocery goods, cannot include any services, cannot include secure prescriptions and does not allow for a system that fulfills onsite orders. It is my opinion that the Kipp patent is clearly not intended to provide the type and variety of everyday consumables, nondurable goods and services typically sold by the grocery store industry.
15. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

FURTHER AFFIANT SAYETH NAUGHT

Executed this 29 day of January, 2009.

By: Cesar A Beltran [sign here]
Cesar A Beltran [printed name]

STATE OF New Mexico)
) §§
COUNTY OF Donz Ana)

SUBSCRIBED AND SWORN TO BEFORE me this 29 day of January, 2009,
by Valerie E. Beltran

Valerie E. Beltran
Notary Public

My commission expires: 8.21.2011

CO
1-29-09